

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2016-CA-001277-MR

JOHN BUCKLEY IV

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE CLARENCE A. WOODALL III, JUDGE  
ACTION NO. 15-CI-00145

RANDY WHITE, WARDEN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, D. LAMBERT AND THOMPSON, JUDGES.

ACREE, JUDGE: John Buckley, IV, appeals, *pro se*, from the Lyon Circuit Court's March 29, 2016 order dismissing his motion for a temporary injunction.

While we believe the circuit court erred by treating the motion as a petition for declaration of rights, we agree the case should be dismissed. Accordingly, we affirm.

Buckley was an inmate housed at the Kentucky State Penitentiary (KSP).<sup>1</sup> In July 2015, Officer David Martin discovered “parlay slips” behind the ceiling light fixture in Buckley’s cell. Officials charged Buckley with gambling or possession of gambling paraphernalia. Buckley challenged the disciplinary action through the administrative process. The disciplinary action was upheld, and Buckley was sentenced to forty-five days in disciplinary segregation, suspended for ninety days.

In the meantime, on August 3, 2015, Officer Cody Edmonds, while conducting a search of Buckley’s cell, opened a peanut butter jar located on a shelf inside of Buckley’s wall locker. Officer Edmonds discovered therein eight orange strips rolled up inside toilet paper, placed in a green bag, and concealed in the peanut butter jar. Testing conducted on the strips confirmed them to be Suboxone, a schedule III narcotic.

Prison officials completed their investigation related to the Suboxone strips on or about September 22, 2015. (R. 30). Buckley was charged with possession or promoting of dangerous contraband. He again challenged the disciplinary action. Although Kentucky Corrections Policies and Procedures (KCPP) call for an adjustment committee hearing within seven days, no such hearing was held until November 22, 2015. *See* KCPP 15.6 Section II(D)(1) (“The hearing shall be held within seven (7) working days after the completion of the investigation. A delay beyond this time shall be justified and documented in

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<sup>1</sup> At some point Buckley was transferred from KSP to the Eastern Kentucky Correctional Complex. He remains incarcerated.

writing on Part II of the report. This time limitation is to benefit staff and does not constitute a time in which the inmate has a right to a hearing.”).

Nearly a week before his hearing, on or about November 16, 2015, Buckley began pursuing a claim in Lyon Circuit Court that prison officials were violating his civil and due process rights. He tendered a motion for a temporary injunction<sup>2</sup> under CR<sup>3</sup> 65.04 against numerous KSP prison officials,<sup>4</sup> accompanied by a motion for leave to proceed *in forma pauperis*. Buckley alleged prison officials were falsely accusing him of wrongdoing in both disciplinary proceedings, and maliciously retaliating against him for exercising his administrative and judicial rights by punishing and even torturing him, subjecting him to undue hardship, and interfering with his right to legal counsel. He claimed prison officials placed him on “dry cell” status in disciplinary segregation for months while awaiting the adjustment committee hearing related to the possession of contraband charge. Buckley further alleged that for four days prison officials left him naked in a segregation cell that was kept at a temperature of less than fifty degrees without a blanket, clothes, shoes, a mattress, or running water. Buckley also asserted prison officials disrupted an attorney visit based on unfounded, fabricated suspicions.<sup>5</sup> His motion requested the circuit court to issue a temporary

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<sup>2</sup> The motion for temporary injunction was formerly filed, following the grant to proceed *in forma pauperis*, on December 17, 2015.

<sup>3</sup> Kentucky Rules of Civil Procedure

<sup>4</sup> The prison officials include James Beaver, Warden Randy White, and Officers Edmonds and Martin.

<sup>5</sup> Buckley submitted numerous inmate grievances related to these claims of maliciously and unfair treatment during the fall of 2015.

injunction prohibiting prison officials from further retaliation against him, and maliciously treatment of him, during the administrative process.

The prison officials moved to dismiss Buckley's injunction motion. They argued the motion should be treated as a petition for declaration of rights challenging the disciplinary proceedings, and the "petition" should then be dismissed because Buckley failed to exhaust his administrative remedies and because both disciplinary decisions were legally sound.<sup>6</sup>

Treating Buckley's motion for an injunction as a declaration of rights petition, the circuit court found "some evidence" to support the disciplinary decisions. It also found KSP complied with all applicable due process requirements and, "[i]f the Petitioner's Motion for Temporary Injunction is treated as an actual Motion for such, it does not comply with CR 65." (R. 95). By order entered March 29, 2016, the circuit court dismissed Buckley's injunction motion. Buckley appealed.

Buckley argues the circuit court should have treated his motion for a temporary injunction as it was titled and should have decided it based on the law governing the issuance of temporary injunctions. He asserts he purposefully did not file a declaration of rights petition in this case because the administrative process was not yet final. (Appellant's Brief, p. 10). In fact, Buckley argues he

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<sup>6</sup> Notably, when Buckley tendered his injunction motion in mid-November, 2015, the administrative disciplinary process related to the contraband charge was not yet final. An adjustment committee hearing was finally held on that charge on November 24, 2015. The committee found Buckley guilty, and he appealed the committee's decision to the Warden on December 8, 2015. The Warden's decision is not contained in this record.

sought the protection of a CR 65.04 injunction, in part, to compel prison officials to afford him the administrative hearing he was due and to inform the circuit court of the alleged human rights abuses Buckley suffered at the hands of prison officials.

We do not fault the circuit court for treating Buckley's motion as declaration of rights petition. The imperfect articulation of many *pro se* pleadings necessitate reasonable interpretation of the relief sought. Nonetheless, we disagree with the circuit court's decision to treat Buckley's motion as a declaration of rights petition in this case. His motion could, and should, have been decided under our injunction jurisprudence. To the extent the circuit court discussed the merits of the disciplinary proceedings, we find its decision to be error. Nonetheless, we agree with the circuit court's alternative ground for dismissal – Buckley's injunction motion fails to comply with CR 65.04.

The decision to grant or deny a temporary injunction under CR 65.04 is left to the circuit court's sound judicial discretion. *Commonwealth ex rel. Conway v. Thompson*, 300 S.W.3d 152, 162 (Ky. 2009). We will not disturb the circuit court's decision absent a clear abuse of that discretion. *Id.* "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Id.* (citation omitted).

CR 65.04 outlines the framework a circuit court is to apply in deciding to issue a temporary injunction. *SM Newco Paducah, LLC v. Kentucky Oaks Mall Company*, 499 S.W.3d 275, 278 (Ky. 2016). CR 65.04(1) provides:

A temporary injunction may be granted during the pendency of an action on motion if it is clearly shown by verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.

A court faced with a request for a temporary injunction must analyze the request on three levels. *Thompson*, 300 S.W.3d at 162 n.9.

First, it must determine if “the movant’s position presents ‘a substantial question’ on the underlying merits of the case, *i.e.* that there is a substantial possibility that the movant will ultimately prevail[.]” *SM Newco Paducah*, 499 S.W.3d at 278 (citation omitted). This element requires that “the complaint . . . be evaluated to see whether a substantial question has been presented.” *Thompson*, 300 S.W.3d at 162 n.9.

Second, the circuit court must find that the movant has demonstrated irreparable injury. *SM Newco Paducah*, 499 S.W.3d at 278. This prong is satisfied if “the movant’s remedy will be irreparably impaired absent the extraordinary relief[.]” *Id.*

And, third, the circuit court must weigh the various equities involved.

*Id.* An injunction is only appropriate if it will “not be inequitable, *i.e.* will not unduly harm other parties or disserve the public.” *Id.* (citation omitted).

Applying these standards to Buckley’s motion, we find the first prong unsatisfied. Buckley failed to file an underlying complaint or petition. Instead, he filed only a motion for a temporary injunction. “By its very nature, . . . a temporary injunction is designed merely to hold the status quo until the merits can be decided.” *Curry v. Farmers Livestock Market*, 343 S.W.2d 134, 135 (Ky. 1961). Absent an underlying petition or complaint, there are no “merits” to decide, no “pending action” in which to file the injunction motion, and no petition or complaint for the circuit court to evaluate to see whether a substantial question on the merits had been raised. Buckley emphasizes that he intentionally did not file a declarations petition in this case because he was still exhausting his administrative remedies. His reasoning is not without logic. But the failure to file an underlying complaint or petition is fatal to Buckley’s injunction motion. *See* CR 65.04(1) (authorizing an injunction motion be filed “during the pendency of an action”); *Thompson*, 300 S.W.3d at 162 n.9 (directing the circuit court to evaluate the ***underlying complaint*** to see whether the movant has presented a substantial question on the merits).

Accordingly, we agree with the circuit court that Buckley’s motion for a temporary injunction fails to comply with CR 65.04 and our injunction jurisprudence. We affirm its decision to dismiss Buckley’s motion.

Before concluding, we pause to point out that, after the conclusion of the disciplinary process related to the possession of contraband charge, Buckley filed a declaration of rights petition challenging both disciplinary proceedings in Franklin Circuit Court. *Buckley v. Ballard*, Civil Action No. 16-CI-00426 (Franklin Circuit Court). Buckley's petition is still pending. Considering our decision today, nothing in the Lyon Circuit Court's order or this Court's opinion should be construed as interfering with or passing judgment on the merits of that petition. It is left to the sound discretion of the Franklin Circuit Court.

We affirm the Lyon Circuit Court's March 29, 2016 order dismissing Buckley's motion for a temporary injunction.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Buckley IV, *Pro Se*  
West Liberty, Kentucky

BRIEF FOR APPELLEE:

Brenn O. Combs  
Frankfort, Kentucky